

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA)
)
)
) Case No. 1:00CR00016
)
v.)
)
)
DAVID GWYNN,)
) **FINAL ORDER**
)
)
) By: James P. Jones
) United States District Judge
)
)
Defendant.)

For the reasons set forth in the Opinion accompanying this Final Order, it is

ORDERED as follows:

1. David Gwynn's Motion to Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C.A. § 2255, is GRANTED as to his claim that his conviction under 18 U.S.C.A. § 922(g)(1) and his sentence under 18 U.S.C.A. § 924(e) are unlawful under *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc); Gwynn's sentence is VACATED, effective upon resentencing by this court; and the current § 2255 action is hereby STRICKEN from the active docket of the court as fully resolved;

2. The United States' Motion to Seal Exhibit 2 (Gwynn's Presentence Investigation Report) and to serve its Response to the § 2255 motion without Exhibit 2 is GRANTED;

3. The Clerk is DIRECTED to schedule a resentencing hearing with the defendant present;

4. The Clerk is DIRECTED to make arrangements for the appointment of counsel to represent Gwynn for resentencing; and

5. The Clerk will send a copy of the Opinion and this Order to the defendant at his place of confinement.

ENTER: October 1, 2012

/s/ James P. Jones
United States District Judge